

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	:	1:20CR320-1
	:	
v.	:	
	:	
JOHN ANDREW RAPSKY	:	

FACTUAL BASIS

NOW COME the United States of America, by and through Matthew G.T. Martin, United States Attorney for the Middle District of North Carolina, and as a factual basis under Rule 11(b)(3), Fed. R. Crim. P., states as follows:

John Andrew Rapsky (“Rapsky”) was born on October 15, 19XX in Sudbury, Ontario, Canada and is a citizen of Canada. On or about October 26, 2000, the University of North Carolina Hospital filed an Immigrant petition for Alien Worker (known as Form I-140) with the United States Immigration and Naturalization Service (“USINS”) on behalf of Rapsky’s then-spouse for an employment-based immigrant visa. If approved, Rapsky would become eligible, as spouse, to derivatively obtain an immigrant visa classification of E39 as the spouse of a skilled worker or professional. On April 17, 2001, USINS approved the Form I-140 visa application for Rapsky’s then-spouse, thereby approving an immigrant visa for Rapsky. Based on the approved Form I-140, Rapsky filed

an Application to Register Permanent Residence or Adjust Status (known as Form I-485) with USINS. On June 15, 2004, USINS approved Rapsky's application and granted Lawful Permanent Resident Status to Rapsky. His alien file reference number is XXX 491 503.

Rapsky has never applied for nor petitioned for United States citizenship. Rapsky knew he was not a United States citizen at all relevant times. Rapsky, in fact, is not and never has been a United States citizen.

On March 13, 2016, in Chatham County, North Carolina, Rapsky executed and submitted a voter registration form titled "North Carolina Voter Registration Application." In box 1, the form states, "Are you a citizen of the United States of America?" Rapsky checked the "yes" box indicating that Rapsky is a citizen of the United States. The attestation above the signature line at the bottom of the form states "I attest, under penalty of perjury, that in addition to having read and understood the contents of this form, that: I am a United States citizen, as indicated above" (emphasis in original). Rapsky signed the form, so attesting.

On or about October 20, 2016, in Chatham County, North Carolina, Rapsky submitted a form requesting an absentee ballot for the November 8, 2016 General Election.

On November 3, 2016, Rapsky completed the absentee ballot, executed the Voter's Certification indicating, among other things, that he certified he was a duly qualified voter and was entitled to vote in the November 2016 election, and submitted the absentee ballot by mail to the Chatham County Board of Elections. Rapsky's absentee ballot was postmarked November 4, 2016.

On November 7, 2016, the Chatham County Board of Elections approved Rapsky's absentee ballot, thereby ensuring that his ballot was counted in the November 2016 election. The Chatham County Board of Election retained Rapsky's absentee ballot, which is designated as "CIV-1628" at the top of the ballot. Chatham County Board of Election records list Rapsky's ballot among the executed absentee ballots from the November 2016 election.

The November 2016 election was held for the purpose of electing a candidate for the office of President, Vice President, Member of the United States Senate, and Member of the United States House of Representatives, among other positions on the ballot.

On March 15, 2019, Rapsky acknowledged to Department of Homeland Security agents during a voluntary, non-custodial telephonic interview that he was a citizen and native of Canada, that he was not a citizen of the United

States, that he registered to vote by submitting the North Carolina Voter Registration Application described above, and that he voted in the November 2016 election.

This the 14th day of October, 2020.

Respectfully submitted,

/s/ MATTHEW G.T. MARTIN
United States Attorney
NCSB #32814
United States Attorney
101 S. Edgeworth Street, 4th Floor
Greensboro, NC 27401
336/333-5351
Email: matt.martin@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2020, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Cheryl D. Andrews, Attorney for Defendant

/s/ MATTHEW G.T. MARTIN
United States Attorney
NCSB #32814
United States Attorney
101 S. Edgeworth Street, 4th Floor
Greensboro, NC 27401
336/333-5351
Email: matt.martin@usdoj.gov